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IN THE

Supreme Court of the United States

No. 444.

OCTOBER TERM, 1931.

VERA ALEXANDER, Administratrix of the Estate of James Alexander, deceased, *et al.*,

Petitioners,

against

SPENCER KELLOGG & SONS, INC.,

Respondent.

BRIEF FOR VERA ALEXANDER AND 30 OTHER PETITIONERS

LUCIEN V. AXTELL and
ELIZABETH ROBINSON,
Proctors for Claimants-Petitioners.

ELIZABETH ROBINSON,
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of Counsel.

PRESS OF PEREMONT PAYNE, INC., 80 WASHINGTON STREET, N. Y.

INDEX

	PAGE
Statement	1
Opinions Below	2
Jurisdiction	2
Statement of Facts	2
The Question Involved	5
Specification of Errors	6
POINT I—The Limited Liability Acts are paramount, their operation excludes the application of the New Jersey Workmen's Compensation Act in this case	7
POINT II—The District Court had and should have exercised jurisdiction to give these claimants a complete remedy in this proceeding	18
POINT III—This proceeding does not involve a case of personal contract by the shipowner	25
POINT IV—The claimants have never waived their right to relief in this proceeding	29
Conclusion	34

List of Cases Cited.

PAGE

American Radiator Co. v. Rogge, 86 N. J. L. 436... 26
American Steamboat Co. v. Chase, 16 Wall 531, 532 17

Butler v. Boston Steamship Co., 130 U. S. 527, 552, 555, 557 ..... 8, 22

Central Railroad Co. of N. J. v. Jersey City, 209 U. S. 473 17
Chelentis v. Luckenbach Steamship Co., 247 U. S. 372 13
Cook v. Smith, 187 Fed. 538 (3rd C. C. A.) 25

Duart v. Simmons, 231 Mass. 313, 319 15

Employer's Liability Assn. Co. v. Cook, 281 U. S. 233 15

Fitzgerald v. Harbor Lighterage Co., 244 N. Y. 132, 137 ..... 30, 34
Flink v. Paladini, 279 U. S. 59; 26 Fed. (2) 21....27, 28

Hartford Accident & Indemnity Co. v. Southern Pacific Co., 273 U. S. 207, 217, 218.....4, 18, 22, 24

In re Pennsylvania R. Co., 48 Fed. (2d) 559, 564.. 24

Langnes v. Green, 282 U. S. 531, 534, 535..... 14

Messel v. Foundation Co., 274 U. S. 427..... 16

Northern Coal & Dock Co. v. Strand, 278 U. S. 142, 144 17

Old Ironsides, 1929 A. M. C. 300, 302 23

PAGE

Providence & New York S. S. Co. v. Hill Mfg. Co., 109 U. S. 578, 600 ..... 20, 21

Sherlock v. Alling, 93 U. S. 99 17
Southern Pacific Co. v. Jensen, 244 U. S. 205, 217, 218 ..... 9, 11, 13
State v. Daggett, 87 Wash. 253 13

The H. F. Dimock, 52 Fed. 598 8
The No. 6, 241 Fed. 69, 71 (C. C. A. 2d C.) 19
The San Pedro (Metropolitan Redwood Lumber Co. v. Charles P. Doe), 223 U. S. 365, 371, 372.. 20, 22
The Scotland, 105 U. S. 24, 25 8

Warren v. Morse Dry Dock & Repair Co., 235 N. Y. 445, 447 ..... 12, 16
Western Fuel Co. v. Garcia, 257 U. S. 233 17

Authorities Cited.

Benedict on Admiralty, 5th Ed., Sec. 484 8

New Jersey Compensation Act, Sec. 2, Par. 12, subdiv. k 11

New York Death Statute 17

Sec. 4285, Rev. Stats., now U. S. C. A., Title 46, Sec. 185 20

Supreme Court of the United States

No. 444.

October Term, 1931.

Vera Alexander, Administratrix of the Estate of James Alexander, deceased, *et al.*,

Petitioners,

against

Spencer Kellogg & Sons, Inc.,

Respondent.

BRIEF FOR PETITIONERS.

Statement.

Certiorari was granted herein to review a decision of the Circuit Court of Appeals for the Second Circuit affirming a final decree of the United States District Court for the Southern District of New York in admiralty, in a proceeding for the limitation of the respondent's liability as owner of the gasoline launch "Linseed King", in which proceeding such limitation was denied on the ground of the respondent's privity and knowledge and jurisdiction below was retained generally to assess the damages of claimants but renounced in respect to the

petitioners' claims. They were held justiciable only before the New Jersey Workmen's Compensation Bureau.

Vera Alexander, administratrix of the estate of James Alexander, deceased, Nora McEachin, administratrix of the estate of Henry A. McEachin, deceased, and thirty other claimants whose names appear in the record (R. 263, 264, 269) are the petitioners herein.

Certiorari was likewise granted in No. 430 on the application of Spencer Kellogg & Sons, Inc. to review the denial of limitation of liability and the disposition of the claims of certain preferred applicants for work designated as the "Saturday men."

Opinions Below.

The opinion of HAZEL, D. J., on the merits is reported in 24 Fed. (2d) 967, the opinion of PATTERSON, D. J., on the status of these claims in 48 Fed. (2d) 311 and the opinion of the Circuit Court of Appeals in 52 Fed. (2d) 129.

Jurisdiction.

The jurisdiction of this Court was invoked by petition for writ of *certiorari*, filed October 7th, 1931, under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. at L. 936, c. 229), and under Rule 38 of this Court. The petition was granted by this Court on November 23, 1931.

Statement of Facts.

Your petitioners number both personal representatives of deceased employees of the respondent and surviving employees who suffered personal injury as a result of the

sinking of the "Linseed King" in the Hudson River on December 20, 1926, while on a voyage from New York City to Edgewater, New Jersey.

Respondent, a New York corporation, was the owner of the "Linseed King" which was used to transport its employees as well as applicants for employment between New York City and the respondent's factory at Edgewater, New Jersey. While the vessel was so engaged, the disaster occurred.

On March 5, 1927, the respondent filed in the United States District Court for the Southern District of New York a petition praying limitation of its liability under the Limited Liability Acts of Congress, U. S. C. A., Title 46, Secs. 182-189, in respect of *all* claims arising out of the disaster (R. 8).

At the respondent's instance the District Court, sitting in admiralty, issued an order restraining the New Jersey Workmen's Compensation Bureau from hearing or determining such claims (R. 27). *By the monition all claimants, including your petitioners, were cited to appear in the limitation proceeding and therein prosecute their claims* (R. 31).

Seventy-eight claimants, including the petitioners, presented their claims and by their answers to the petition denied the respondent's right to limitation of its liability because of its privity to and knowledge of the unseaworthiness that caused the disaster.

The case was tried from January 12th to February 1st, 1928, before Hon. JOHN R. HAZEL, D. J., who, on March 15, 1928, rendered his decision in writing (R. 122), 24 F. (2d) 969, adjudging the respondent liable in full on the ground that the vessel was unseaworthy for navigating the Hudson River during the winter season, that she was overcrowded, undermanned and that the occurrence took place with the privity and knowledge of the respondent.

On the authority of *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co.*, 273 U. S. 207, Judge HAZEL ordered the proceeding continued in admiralty before a Special Commissioner for the purpose of assessing the damages of all claimants, including the petitioners (R. 139-140).

Hearings before the Special Commissioner on the seventy-eight claims filed began on May 15, 1928, and ended May 27th, 1930. On July 9th, 1930, the Commissioner filed his report awarding damages. He held that since the deaths occurred on navigable waters within the territorial limits of the State of New York, while the decedents were on a vessel making a voyage from New York to New Jersey, the general maritime law as supplemented by the New York Death Statute determined the right and measure of recovery, and further that the nature of a limitation proceeding conferred complete jurisdiction upon the admiralty court to award damages to all the claimants (R. 183).

On exceptions to the Commissioner's report, Hon. ROBERT P. PATTERSON, D. J., ruled that such claimants as were employees of respondent, or representatives of employees, could not recover in the limitation proceeding but must find their only remedy before the New Jersey Workmen's Compensation Bureau, *notwithstanding the fact that the tort was maritime and the petitioners had been required to appear in admiralty to prove their claims* (R. 31), *and the Compensation Bureau had been restrained for more than four years from hearing or determining such claims and notwithstanding the fact that a remedy under the Compensation Law was by that time equivalent to a complete denial of justice.* With respect to claims arising out of the death of non-employees, however, he affirmed the ruling of the Special Commissioner and held the New York Death Statute governed. (Opinion of Judge PATTERSON, R. 180-195).

The final decree entered on February 24, 1931, accordingly dismissed the claims of your petitioners (R. 251) who thereupon appealed to the Circuit Court of Appeals for the Second Circuit (R. 263). Thereafter the respondent also appealed from so much of the final decree as had adjudged it liable for the disaster and had awarded damages, based on the general maritime law as supplemented by the New York Death Statute, to such claimants as were not employees or representatives thereof.

The appeals were argued before the United States Circuit Court of Appeals on June 9th and 10th, 1931. On July 24th, 1931, that Court rendered a decision affirming the decision and decree of the District Court (R. 2365). The order for mandate was filed July 31st, 1931 (R. 2377) and the applications for certiorari followed.

The Question Involved.

Was the District Court right in renouncing jurisdiction over claims arising from death of or injury to general employees of the vessel owner and in remitting such claimants, your petitioners, to the New Jersey Workmen's Compensation Bureau, or should the District Court have maintained jurisdiction over such claims and have afforded these claimants complete relief in the limitation proceeding by awarding them damages in accordance with the general maritime law as supplemented by the Death Statute of New York (which State had jurisdiction over the waters in question), or, in other words is there such a conflict between the Compensation Act of New Jersey and the Federal Limited Liability Acts that the Compensation Act must be held completely inoperative in order that equitable justice may be done.

Specification of Errors.

The District Court and the Circuit Court of Appeals erred in respect to the fundamental considerations governing the disposition of these claims and such error, though capable of a diversity of statement when considered in different lights, may be summarized as follows:

(1) The courts below erred in failing to hold that Congress by the enactment of the Limited Liability Acts had preempted the field and conferred upon the District Court an exclusive jurisdiction in this proceeding so that the rights and remedies of the parties, under the Acts of Congress were incapable of being modified by subsequent State statutes, and the jurisdiction of the District Court was not capable of being displaced by the Workmen's Compensation Bureau.

(2) In failing to hold that the District Court had jurisdiction to give all claimants in the limitation proceedings a complete remedy; and in failing to afford them "equitable justice."

(3) In failing to hold that the respondent by invoking the jurisdiction of the District Court under the Limited Liability Acts had debarred itself from raising its later and inconsistent contention that the Workmen's Compensation Act of the State of New Jersey excluded the jurisdiction of the District Court and in failing to hold that to give effect to that contention was to work great prejudice to the rights of these petitioners.

(4) In failing to hold that by virtue of the fact that the deaths and injuries involved occurred to persons taking passage on a vessel voyaging on navigable waters between the States of New York and New Jersey, the general maritime law, as supplemented by the New York Death Statute, governed the rights and liabilities of the parties.

POINT I.

The Limited Liability Acts are paramount; their operation excludes the application of the New Jersey Workmen's Compensation Act in this case.

It requires no argument to demonstrate that the Limited Liability Acts and the New Jersey Workmen's Compensation Act, as applied to this case, are in conflict. Such conflict is sufficiently demonstrated by the very fact that these claimants have been denied standing in the limitation proceeding and have been denied a remedy under the Limited Liability Acts because of the supposed application of the New Jersey Workmen's Compensation Act. It is in deference to the Workmen's Compensation Act that these claimants have been turned out of Court.

When the Limited Liability Acts were enacted, Workmen's Compensation Statutes were not in use, and, had this case arisen before such statutes came into being, no one would question the application of the Limited Liability Acts and the competency of the District Court to give these claimants a remedy thereunder.

Opposing counsel suggested in the court below that the question in this case is whether admiralty may oust the Workmen's Compensation laws. That might have been the question had the Workmen's Compensation laws been first enacted and had the Limited Liability Acts been of later date. Congress preempted the field in enacting the Limited Liability Acts and once its legislation took effect, no legislation from any other source could displace it. If the Limited Liability Acts would have formerly applied and the jurisdiction of the District Court would have formerly extended to affording these claimants relief in this proceeding, how have the Acts of Congress or the jurisdiction of the District Court thereunder been dis-

placed? It cannot be supposed that the passage of a State statute has diminished the force of the Acts of Congress or has defeated the jurisdiction they conferred. The question here is one of jurisdiction—a jurisdiction originally invoked by the employer and originally asserted by the District Court but later renounced by that Court in deference to a State statute and in prejudice to the rights of these claimants under the Acts of Congress. The Courts below have allowed a State statute to displace the Acts of Congress and deprive these claimants of the remedies available under those Acts in this proceeding. That is the fundamental error in this case.

It is a misconception of the petitioners' contention to assume that the claims they presented in this proceeding are mere substitutes for claims under the Workmen's Compensation Act. On the contrary the petitioners contend that the Limited Liability Acts within their scope exclude the operation of the Workmen's Compensation Act.

It is a further misconception to suppose that the application of the Limited Liability Acts necessarily depends upon the employer's election, for it was held by ADDISON BROWN, D. J., in the Southern District of New York in *The H. F. Dimock,* 52 Fed. 598, that any damage claimant may institute the limitation proceedings, and this Court in *The Scotland,* 105 U. S. 24, top page 35, referred to the statute "which declares that either party 'may take the appropriate proceedings * * *.'" See also *Benedict on Admiralty,* 5th Ed., Sec. 484.

That the Limited Liability Acts are paramount and no State legislation can prevent their complete operation was decided by this Court in *Butler* v. *Boston Steamship Co.,* 130 U. S. 527, 555, 557:

> "The law of limited liability, as we have frequently had occasion to assert, was enacted by Congress as a

part of the maritime law of this country, and therefore it is co-extensive, in its operation, with the whole territorial domain of that law * * *. As the constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature, and not in the state legislature * * *.

"It being clear, then, that the law of limited liability of shipowners is a part of our maritime code, the extent of its territorial operation (as before intimated) cannot be doubtful. It is necessarily coextensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith * * *.

"The present case, therefore, is clearly within the admiralty and maritime jurisdiction. The stranding of the City of Columbus took place on Devil's Bridge, on the north side of and near Gay Head, at the west end of Martha's Vineyard, just where Vineyard Sound opens into the main sea. Though within a few rods of the island (which is a County of Massachusetts) and within the jaws of the headland, it was on the navigable waters of the United States, and no state legislation can prevent the full operation of the maritime law on these waters * * *"

The conflict between the Limited Liability Acts and the State Workmen's Compensation laws was noticed early by this Court in *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205. In that case, Mr. Justice McREYNOLDS said, in speaking of the New York State Workmen's Compensation Act (p. 218):

"* * * And finally this remedy is not consistent with the policy of Congress to encourage investments in ships manifested in the Acts of 1851 and 1884 (Rev. Stats., Secs. 4283-4285 * * *) which declare a limitation upon the liability of their owners."

It is true that in cases subsequent to the *Jensen* case, Workmen's Compensation Acts of states have been held valid where the employees were engaged in non-maritime employments, yet in none of those cases was the question of the conflict between the Limitation Act and the Compensation Act involved.

The Limited Liability Acts contemplate a limitation of liability to the value of the vessel and pending freight, though the vessel lie at the bottom of the sea, provided the disaster occur without the owner's privity or knowledge. Workmen's Compensation Statutes look to a fixed liability according to arbitrary schedules. Workmen's Compensation Statutes have no regard to the presence or absence of negligence on the part of employer or employee, and no question of the employer's privity or knowledge can arise under them. The Limited Liability Acts on the one hand and the Workmen's Compensation Statutes on the other hand represent two distinct legal systems, incapable of simultaneous application and consistent operation. These systems further contrast in the fact that the essential character of workmen's compensation is a summary remedy without delay, expense or need of legal representation, whereas a limitation proceeding is a complicated legal proceeding accompanied by all the incidents which a Compensation Act rejects.

The inconsistency of the New Jersey Workmen's Compensation Act and the Federal Limitation Statute, and the impossibility of enforcing both of them when a limitation proceeding is commenced is clearly illustrated by an examination of the results in a typical limitation case, if an attempt is made to adjudge the rights of the claimants on the basis of a compensation law.

In the present case, for instance, the first step is a protracted limitation of liability proceeding which lasts four or five years. Assuming that at the end of that time the petitioner is held entitled to limitation and the com-

pensation law is held the sole remedy for the claimants, then the $1,500 representing the value of the vessel will be divided not only among the thirty-two employees entitled to compensation but also among the other claimants who were not employees and who do not receive workmen's compensation. The method of distributing the $1,500 is to first ascertain the total amount of all the claims, both compensation and non-compensation, and using that figure as a denominator, and the $1,500 as a numerator to award each claimant that fractional part of his damages.

However, in order to obtain the total amount of all the claims, the amount of the total Workmen's Compensation Liability would have to be known. But the total amount of compensation cannot be known for many years. By the very terms of the Compensation Act the payments under it are made weekly. In the case of those who are killed, the next-of-kin receive an amount weekly only so long as they live. In the case of infants, for instance, the payments under the New Jersey law continue until they are sixteen years of age, unless they die in the meantime. (New Jersey Workmen's Compensation Law, Par. 12, Subdiv. k.)

It would therefore, be years before the moiety which the other non-compensation claimants were entitled to in limitation proceedings could be determined. They would have to wait until all the compensation claims had accrued during the course of from six to sixteen years. (New Jersey Compensation Act, Sec. 2, Par. 12, Subdiv. k) (R. 2376). In the meantime, none of the claimants would receive anything.

Furthermore, the problem cannot be solved by attempting to fix the compensation liability in limitation proceedings. The impossibility of the enforcement of a Compensation Act was expressly noticed by this court in *Southern Pacific Co.* v. *Jensen* (*supra*). At page 218, the Court said:

> "The remedy which the *Compensation Statute* attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court and is not saved to suitors from the grant of exclusive jurisdiction."

It has also been recognized by other courts. In *Warren v. Morse Dry Dock & Repair Co.*, 235 N. Y. 445 (Certiorari denied, 262 U. S. 756) the Court said at page 447:

> "The Workmen's Compensation Act does not lend itself to enforcement in the maritime courts. It does not lend itself to enforcement in the common-law courts according to common-law remedies. For these reasons it is inoperative to supplement or modify the maritime law * * *."

If, on the other hand, in the limitation proceeding the employer is held to be *not* entitled to limit its liability, and it is also held that the claimants' sole right is under the compensation law, then the claimants will have been deprived, for all practical purposes, of the benefits of the compensation law.

They will not have received the prompt payments which were contemplated under the compensation law. All of them will have been put to great expense in the limitation proceedings in establishing the privity and knowledge of their employer. Moreover, they will have had to pay their attorneys in the limitation proceeding. The net result may well be that some of the claimants will have spent more money in the limitation proceeding than they will receive under the compensation law. None of these burdens were contemplated by the State Legislature when it passed the Act.

The benefits of the compensation law were intended by the Legislature as a substitute for the right which the claimants, as employees, formerly had of recovering full damage upon proof of negligence.

Not only will the claimants not receive those benefits in the full measure that the Legislature intended, but even a partial recovery of benefits will have been achieved only after they have borne the burden of proving negligence,—a burden which the Act was expressly designed to relieve them of. They will have had imposed upon them all the burdens of the old (common) law and none of the benefits of the new (compensation) law.

Viewed from the standpoint of the shipowner, the Workmen's Compensation Act is so opposed to the Limited Liability Acts that both cannot co-exist as the law of the case. Were the shipowner declared entitled to limitation, the imposition of compensation payments under the New Jersey Statute would deprive the shipowner of the benefit of the Limited Liability Acts which were so largely designed to promote shipping.

Such an impairment of the purpose and policy of the Acts of Congress and of the characteristic features of our maritime law would be invalid.

> *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205;
> *Chelentis* v. *Luckenbach Steamship Co.,* 247 U. S. 372;
> *State* v. *Daggett,* 87 Wash. 253.

In the latter case an application for mandamus was sought against the State Industrial Commission of Washington to compel it to make demand for compulsory premiums to be paid into the State fund by a steamship company. The mandamus was denied. The Court, pointing out the conflict in policy between the Compensation Statute and the Federal Limitation Statute, said:

> "It will thus be seen that Section 4283 of the Federal statutes limits the liability of the owner of a vessel. This limitation of liability becomes the extent of the recovery. Beyond the liability as limited

by the statute there can be no recovery. The Workmen's Compensation Act limits the amount for which the employer may become liable as specified in the act. The Congress of the United States having passed a law which limits or measures the extent of the liability of the owner of a vessel to a workman who has sustained an injury, the legislature could not have the power to fix another and different standard or measure" (p. 259).

It is difficult to understand on what principle a State statute can be given an overruling force where limitation is denied and yet be treated as conflicting with the Acts of Congress where limitation is granted. Jurisdiction in a limitation proceeding cannot be made dependent upon the accident that the merits are determined one way rather than another. As this Court said in *Langnes* v. *Green*, 282 U. S. 531, at pages 534-5:

"The district court had jurisdiction to pass upon the sufficiency of the pleadings and to decide the question upon the evidence; and a determination thereof either way, whether right or wrong, would have been a determination by that court upon the merits in the proper exercise of its jurisdiction. *Binderup* v. *Pathe Exchange*, 263 U. S. 291, and cases cited; *Moore* v. *N. Y. Cotton Exchange*, 270 U. S. 593, 608. In the Binderup case the rule was stated as follows (p. 305):

'Jurisdiction is the power to decide a justiciable controversy, and includes questions of law as well as of fact. A complaint setting forth a substantial claim under a federal statute presents a case within the jurisdiction of the court as a federal court; *and this jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it may decide as to the legal sufficiency of the facts proven. Its decision either way upon either question is predicated upon the existence of jurisdiction, not upon the absence of it* * * *.'"

When a conflict of this character arises, therefore, the Compensation Acts must yield to the Acts of Congress and the general maritime law, and no distinction is made between elective and compulsory compensation acts.

Employers' Liability Assur. Corp. v. *Cook*, 281 U. S. 233.

In that case this Court said in reversing a judgment for compensation to a workman injured while unloading a ship, based upon a Texas elective compensation law similar to the New Jersey Act:

> "The fact that the Compensation Law of the State was elective in form does not aid the respondents. The employer did not surrender rights guaranteed to him by the Federal law merely by electing to accept one of two kinds of liability in respect of matters within the State's control, either of which she had power to impose upon him" (pp. 236, 237).

In *Duart* v. *Simmons*, 231 Mass. 313, 319, the Supreme Judicial Court said with respect to the two forms of compensation acts:

> "The ground of the *Jensen* decision, as we understand it, is that the kind of legislation represented by Workmen's Compensation Acts is beyond the jurisdiction of the states so far as it relates to admiralty and maritime affairs. The reasoning of that decision seems to us to apply equally to an elective as to a compulsory Workmen's Compensation Act. Consent of parties cannot confer jurisdiction. A statute which in its nature is outside the jurisdiction of the state, because within the exclusive domain of the federal government, cannot confer rights or be a bar to the enforcement of common law obligations."

The foregoing analysis of the two acts and of the difficulties which are inherent in applying both at the same

time, clearly demonstrates that the only solution of the difficulty is to reject the Compensation Act completely.

Congress, in enacting the Longshoremen's and Harbor Workers' Compensation Act, specifically excepted liability thereunder from limitation under the Limited Liability Acts, thus recognizing that such action was necessary to prevent the Limited Liability Acts from applying. Although the matter was thus prominently brought to the attention of Congress at that time, it did not choose to make the same provision with respect to State Workmen's Compensation Acts, thus indicating its intention that the Limited Liability Acts should exclude their operation.

Where the Compensation Statute is excluded from operation, the applicable death statute becomes operative, for where a compensation remedy is not substituted, the remedy by action for death remains effective. *Messel* v. *Foundation Co.*, 274 U. S. 427.

New York also has taken the view that where the Compensation Law is rendered inapplicable because of any conflict with the Maritime Law, the Death Act, for which the Compensation Law was a substitute, becomes operative. In *Warren* v. *Morse Dry Dock & Repair Co.*, 235 N. Y. 445, the Court said at page 447:

> "The result ensues, as to maritime torts, that the general right of action for injuries resulting in death remains what it was before the compensation act was passed. The legislature intended, in passing that act, not to abolish every remedy, but to substitute one remedy for another. * * * To the extent that the substitution of a new remedy is ineffective, the old one survives."

It is well settled that, where no Federal statute regulates the right of recovery for wrongful death, the maritime law may be supplemented by the death statute of the State within whose navigable waters the tort causing

the death is committed (*Western Fuel Co. v. Garcia*, 257 U. S. 233; *Northern Coal Co.* v. *Strand*, 278 U. S. 142, 144; *American Steamboat Co.* v. *Chase*, 16 Wall 531, 532; *Sherlock* v. *Alling*, 93 U. S. 99). The tort causing the deaths occurred in the Hudson River and within the jurisdiction of the State of New York (*Central Railroad Co. of N. J.* v. *Jersey City*, 209 U. S. 473) so that the New York Death Statute gave a right of action for the deaths so caused.

Although jurisdiction under the Limited Liability Acts is not confined to maritime claims, it is a strong consideration in favor of that jurisdiction that these claims are maritime. The tort occasioning the injuries and death was a peculiarly maritime tort, it was the unfitness of the vessel for the voyage attempted through ice, its overcrowded condition and insufficient manning, that occasioned personal injuries and loss of life. It was negligence in the direction and management of a vessel that entrapped so many persons in the perils of the waters. Whatever violations of law were involved were violations of maritime law and of rights and duties thereunder. It was to a watery grave that so many went down. The locus, the mode of conveyance, the requirements of navigation, the perils encountered, the negligence involved, the very manner of the injury and death, all were maritime. In the face of all this it has been urged that the employees here involved were not rendering a maritime service. Neither were they rendering a non-maritime service. They were not working; they were engaged in no service of any kind. The question of maritime service has been stressed only where the employee was actually at work and where consequently the character of his employment became a factor in considering his relation to the admiralty jurisdiction. If, however, maritime service is the turning point of the case, must

it not then be decisive that the employer was rendering a maritime service—ferriage, passenger service. The carriage of employees as invitees is no less a maritime service than the carriage of the public.

It is unnecessary, however, to urge this point because the obligation of the Court to do equitable justice to the claimants in the limitation proceeding completely excludes the compensation law from measuring the rights of the parties in a limitation proceeding.

POINT II.

The District Court had and should have exercised jurisdiction to give these claimants a complete remedy in this proceeding.

Such was the ruling of this Court in *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co.*, 273 U. S. 207, wherein it was decided (pp. 217, 218):

> "The jurisdiction of the admiralty court attaches *in rem* and *in personam* by reason of the custody of the *res* put by the petitioner into its hands. The court of admiralty, in working out its jurisdiction, acquires the right to marshal all claims, whether of strictly admiralty origin or not, and to give effect to them by the apportionment of the *res* and by judgment *in personam* against the owners, so far as the court may decree. It would be most inequitable if parties and claimants, brought in against their will and prevented from establishing their claims in other courts, should be unable to perfect a remedy in this proceeding promptly, and should be delayed, until after the possible insolvency of the petitioner, to seek a complete remedy in another court, solely because the owner can not make his case of personal immunity. 1 Benedict's Admiralty, 5th Ed., 488. If Congress has constitutional power to gather into

the admiralty court all claimants against the vessel and its owner, whether their claims are strictly in admiralty or not, as this court has clearly held, it necessarily follows as incidental to that power that it may furnish a complete remedy for the satisfaction of those claims by distribution of the *res* and by judgment *in personam* for deficiencies against the owner, if not released by virtue of the statute.

Such a conclusion is quite in accord with the rules governing equity procedure in general conformity with which this limitation of liability statute has been construed and enforced. Where a court of equity has obtained jurisdiction over some portion of a controversy, it may and will in general proceed to decide all the issues and award complete relief, even where the rights of parties are strictly legal and the final remedy granted is of the kind which might be conferred by a court of law * * *. Of course, this equitable rule enlarging the Chancellor's jurisdiction, in order to completely dispose of the cause before him, does not usually apply in an admiralty suit * * *. But this limitation of liability proceeding differs from the ordinary admiralty suit, in that, by reason of the statute and rules, the court of admiralty has power (*Providence Steamship Co.* v. *Hill Manufacturing Co.*, 109 U. S. 578) to do what is exceptional in a court of admiralty—to grant an injunction, and by such injunction bring litigants, who do not have claims which are strictly admiralty claims, into the admiralty court * * *. There necessarily inheres, therefore, in the character of the limitation of liability proceeding, in reference to such non-admiralty claims, the jurisdiction to fulfill the obligation to do equitable justice to such claimants by furnishing them a complete remedy."

In the case of *The No. 6*, 241 Fed. 69 (C. C. A. 2), Judge HOUGH said (p. 71):

"* * * proceedings for limitation of a shipowner's liability from all demands * * * are within the general maritime law and admiralty jurisdiction, and

that such a proceeding was an independent head of jurisdiction, without regard to whether *the claims limited against were such as might have been sued upon in the admiralty or not.*"

The jurisdiction which a court of admiralty thus acquires is both complete and *exclusive.* The statute itself and the decisions construing the objects to be accomplished thereby make it necessary that upon the filing of the petition for limitation of liability all other actions and proceedings cease.

Sec. 4285, Rev. Stats., now U. S. C. A., Title 46, Sec. 185;*
Providence & New York S. S. Co. v. *Hill Mfg. Co.,* 109 U. S. 578;
The San Pedro (*Metropolitan Redwood Lumber Co.* v. *Charles P. Doe*), 223 U. S. 365.

In the case last cited this Court said (p. 372):

"There was a due appraisement of the *San Pedro* and her pending freight and a stipulation entered into * * * and a monition duly issued, requiring all persons to present their claims and make proof. In that situation, *the jurisdiction of the court to hear and determine every claim in that proceeding became exclusive.* It was then the duty of every other court, Federal or state, to stop all further proceedings in

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*"It shall be deemed a sufficient compliance on the part of such owner with the requirements of this chapter relating to his liability for any embezzlement, loss or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease" (R. S. §4285).

separate suits upon claims to which the limited liability act applied * * *.

The very nature of the proceeding and the monition has the effect of a statutory injunction. Indeed, that is the express declaration of the statute."

That injunction applies alike to State as well as to Federal tribunals for, as this Court stated in *Providence & New York Steamship Co.* v. *Hill Manufacturing Co.*, 109 U. S. 578 at page 600:

"Surely this injunction applies as well to 'claims and proceedings' in State Courts as to those in the Federal Courts; * * * any further proceedings on the part of said Courts, after being judicially informed by plea or suggestion duly made in the cause of the action and proceedings in the District Court, would be against the express words of the act, and clearly erroneous."

Indeed, to make certain that all other tribunals, including the New Jersey Workmen's Compensation Bureau, would not exercise jurisdiction in the matter, the District Court specifically enjoined them from hearing or determining any claims arising out of the disaster. The restraining order reads (R. 27):

"ORDERED that service of this order as a restraining order be made * * * *to the New Jersey State Workmen's Compensation Bureau by delivering a certified copy of this order to the Secretary of said New Jersey State Workmen's Compensation Bureau.*"

When, therefore, respondent filed its petition praying limitation of its liability and caused a monition to be issued out of the District Court, "citing all persons claiming damages for any and all loss, damages or injuries in connection with said alleged disaster on the voyage on which the motorboat "Linseed King" was then

engaged, to appear before said court and make due proof of their respective claims and answer the allegations of the said petition" (R. 30), these claimants had to appear in the limitation proceeding and there prove their claims or else abandon them.

In *Butler* v. *Boston Steamship Co.*, 130 U. S. 527, this Court said that upon the issuance of such a monition (p. 552):

> "* * * it was then the duty of the libellants to have appeared in the cause of limited liability instituted by the owners of the vessel, and to have contested there the question whether, in the particular case, the owners were or were not entitled to the benefit of the law. Had the action of the appellants been first commenced, it would have been suspended by the institution of the limited liability proceedings; and the very object of those proceedings was, not only to stop the prosecution of actions already commenced, but to prevent other suits from being brought."

So in *The San Pedro* (*Metropolitan Redwood Lumber Co.* v. *Charles P. Doe*), 223 U. S. 365, this Court said (bottom p. 371):

> "The monition which issues when a vessel has been surrendered, and a stipulation entered into to pay the value into court, *requires every person to assert his claim* in that case."

This cause having been tried and the respondent found at fault and limitation denied, HAZEL, D. J., as trial judge, had to determine whether the proceeding should be dismissed or whether it should be continued for the purpose of assessing all claimants' damages. Having regard to the precedents, particularly *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co.*, 273 U. S. 207, he held (R. 139, 140):

"Having determined that the petition must be denied, the proceeding must be continued in this Court under the monition for the purpose of passing upon the rights of all claimants filing their claims. The question of procedure at the outstart sounded interesting and important, since there existed considerable uncertainty in relation thereto (see Benedict on Admiralty, 5th Ed., Vol. 1, Secs. 488-512-516), which has now been definitely removed. In *The Titanic*, 204 Fed. 295, Judge HOUGH, after discussing the various adjudications applying to the subject, reached the conclusion that a petition for limitation of liability confers exclusive jurisdiction upon the admiralty court not only to determine petitioner's rights to the benefit of the statute, *but also, upon denial of such right, to enforce rights of claimants in full.* This view has recently been approved by the Supreme Court, Chief Justice TAFT writing the opinion, in *Hartford Accident Co. v. Sou. Pacific*, 273 U. S. 207; 47 S. Ct. 357; 71 L. Ed. 612, *wherein it was clearly decided that a limitation of liability proceeding does not terminate because limitation is denied, but the Court may proceed to adjudicate all claims against the vessel and her owner, both in rem and in personam by reason of the res which petitioner has surrendered to the custody of the Court: 'Whether,' the learned Court said, 'their claims are strictly in admiralty or not.'"*

The same problem arose in the United States District Court for the Southern District of California, in *The Old Ironsides*, 1929 A. M. C. 300. In that case the Paramount Pictures Corporation was denied limitation of liability for injuries and death caused by an explosion on a floating structure representing the historic ship "Constitution," off Catalina Island. The owner thereupon urged that claimants should be remitted to their remedy before the California Workmen's Compensation Bureau, but Judge NETERER overruled this contention and, on the authority of the *Hartford* case, *supra*, allowed claimants a complete recovery in admiralty, saying (p. 302):

> "* * * The claims obviously are of maritime nature, and having petitioned to limit liability and being denied, the petitioner may not challenge the court's jurisdiction to control *complete* remedy. *Bolikow: Hartford Accident and Indemnity Company* v. *Southern Pacific,* 1927 A. M. C. 402; 273 U. S. 207; *In re Titanic,* 204 Fed. 250."

In the case at bar the entire controversy was committed to the District Court for complete adjudication. Yet, after every proceeding to that end had been taken, after a commissioner appointed by the interlocutory decree had held hearings lasting more than two years and had made a report on the assessment of damages, it was ruled that the District Court was without power to adjudicate these claims over which it had exercised unchallenged control and from the determination of which it had barred every other tribunal. This about face on the part of the District Court involved the renouncement of a jurisdiction already exercised and a complete failure of justice in respect to these claimants who are required to start all over again before the Workmen's Compensation Bureau on a different basis of liability, losing the benefit of the time and money expended, the evidence produced and the adjudication originally had in this proceeding on the merits and on the damages. This result is both glaringly unjust and violently opposed to the ruling of this Court in the *Hartford* case, *supra.* The very court whose decision is now under review held in another limitation proceeding, *In re Pennsylvania R. Co.,* 48 F. (2d) 559, 564, it had jurisdiction to adjudicate a claim for damages to a boardwalk on the beach and to apply the maritime rule of divided damages although the injury took place on land and, had the controversy been determined in a common law court, the contributory negligence found would have defeated a recovery. The court said:

"Yet the district court got jurisdiction because of the limitation proceeding * * *. That liability is justiciable in this proceeding, though the tort was not maritime, and the limitation be denied. *Hartford Acc. & I. Co.* v. *So. Pac. Co.*, 273 U. S. 207" (p. 564).

Complete remedy and equitable justice in this case requires that full damages under the general maritime law be awarded these petitioners as compensation for the culpable negligence of respondent.

POINT III.

This proceeding does not involve a case of personal contract by the shipowner.

At the outset, in its petition for limitation, the respondent took the position that it was entitled to limit whatever liability might exist by virtue of the Workmen's Compensation Act of New Jersey or otherwise, to $1500. The petitioners made no claim to workmen's compensation or to a personal contract right by virtue of the Workmen's Compensation Law. The pleadings of the respective parties are adapted to exclude rather than invoke a workmen's compensation remedy.

See the analogy of *Cook* v. *Smith*, 187 Fed. 538 (3rd C. C. A.) in reference to the pleading.

The claimants have consistently maintained the position that the scope of the Limited Liability Acts precluded the operation of the Workmen's Compensation Act and that the paramount power of Congress and the jurisdiction thereby conferred upon the District Court contemplated a totally different forum and mode of relief. In invoking the jurisdiction of the District Court the employer necessarily had taken the same position and in submitting to that jurisdiction the questions of its negli-

gence and its privity, the employer, as shipowner, recognized by every legal implication the right of the District Court to give effect by its own procedure to its own determination of those questions, whether resulting in limitation or in denial of limitation.

At page 20 of their brief in the Circuit Court of Appeals, the employer's proctors stated:

> "However, it may well be questioned whether the liability even under an elective Workmen's Compensation Law is, in fact, contractual in the sense contemplated in these cases; and, in the absence of any authority on the subject, petitioner felt warranted in asking for a limitation as to all liability."

Notwithstanding that neither the employer nor the claimants ever asserted that the Workmen's Compensation Law of New Jersey constituted a personal contract of the shipowner, debarring such employer from seeking limitation and the District Court from taking jurisdiction, Judge PATTERSON in the District Court said:

> "It is settled that the limitation acts do not apply to liabilities resting on personal contracts of the owner * * *.
>
> The Limitation Acts therefore gave the petitioner no protection against workmen's compensation claims, and I am convinced that any employee, by pressing an exception or motion against the petition, could have promptly obtained a dismissal of this proceeding so far as it concerned him."

It is strange that the District Court should find a personal contract where neither of the supposed parties to it had found one, and when New Jersey itself does not regard the obligation as personal but one imposed in law, *American Radiator Co.* v. *Rogge*, 86 N. J. L. 436, 437, where the Court said:

> "The liability is indeed contractual in character by force of the very terms of the statute, *but it is not the result of an express agreement between the parties;* it is an agreement implied by the law . . . ."

The Circuit Court of Appeals did not deal with the question, but it is fair to assume from its discussion of the contract feature of the case (R., 2373) that it did not regard the obligation under the elective form of the New Jersey Compensation Act as a personal contract. The Court said:

> "Since the New Jersey statute imputes a contract from the employment alone, it is a fiction to say that the parties truly contract. In general, indeed, the law does impose that meaning upon any promise which seems to it best, regardless of the promisor's actual intent, but the meaning it chooses depends upon what an ordinary person, set as the promisor, would have understood by the words used. Yet it would make no difference under the New Jersey act that neither party knew of its existence; he would be equally bound."

Under such circumstances, it can hardly be said that the employer made any "personal contract" merely because he did nothing to prevent the operation of the Workmen's Compensation Law.

A very similar question was presented to this Court in *Flink* v. *Paladini*, 279 U. S. 59. There the laws of the State of California provided that a stockholder should be individually and personally liable for a proportion of the debts of the corporation. Such stockholder sought the protection of the Limited Liability Acts. Confronted with the argument that the liability he had assumed under the law of California was "an independent one voluntarily assumed by contract, with which the Acts of Congress do not interfere" (p. 62), this Court held that the Acts of Congress were paramount and that the stock-

holder was entitled to limit his liability. This Court said (p. 63):

> "Having no doubt of the comprehensive purpose of Congress we should not be ingenious to construe the California statute in such a way as to raise questions whether it could be allowed to interfere with the uniformity which has been declared a dominant requirement for admiralty law."

It should be remembered that the Compensation Acts of some states, e. g., New York, are not elective but compulsory. If the elective character of some State Compensation Acts is to make them personal contracts of the shipowner, while the compulsory character of others prevents their having that effect, then the operation of the Limited Liability Acts will lack the uniformity of application intended by Congress.

The Circuit Court of Appeals for the Ninth Circuit in *Flink* v. *Paladini*, 26 Fed. (2d) 21, said at page 23, of the Limited Liability Acts:

> "The purpose of the statute is to encourage contributions of money for the construction and operation of ships, but, under this view, an investor, so contributing through the medium of a holding corporation organized in California, would be wholly without the intended protection, whereas another, so contributing as a stockholder in a like corporation organized in some other state, if not doing business in California, and still another contributing directly, would be fully protected. Instead of uniformity of results in the operation of a general federal statute, we would have a wide diversity, without any basis at all in reason. And in the case of a California corporation the purpose of the statute would be wholly defeated."

Uniformity in the class of cases illustrated by the case at bar can be secured only by giving complete effect to the Limited Liability Acts.

Finally, even if it be assumed that the elective character of the New Jersey Workmen's Compensation Act amounts to a personal contract of the employer, the same irreparable damage to the claimants necessarily ensues, because of the commencement of a limitation proceeding in which the "contract" is involved.

The very purpose of the Compensation Act is to provide for prompt payment of compensation to employees and for the relief of the employees from the burden of proving his employer's fault. If the employer is entitled to commence a limitation proceeding at all, he must be given an opportunity to prove that the liability against which he seeks to limit does not arise by virtue of a personal contract. The litigation arising over this question is quite as effectual as the litigation arising over the question of privity and knowledge to deprive the employees forever of the beneficial remedy which the Compensation Law seeks to give them. In other words, by the very litigating of the question of whether there is or is not a personal contract, admiralty takes jurisdiction from the very beginning and proceeds to a final remedy, and when that time has arrived the Compensation Law has long since been emasculated and rendered worthless.

POINT IV.

The claimants have never waived their right to relief in this proceeding.

The claimants have never questioned the competency of the forum before which they were brought by the employer seeking limitation of liability, but on the contrary have at all times concurred in the employer's original assertion of the jurisdiction of the District Court. That jurisdiction was first invoked by the employer and

in seeking the benefits the employer must accept the burdens incident to the administration of the Acts of Congress. After contesting the merits, unsuccessfully, the employer now seeks to banish claimants from the very forum before which it haled them and by authority of which it barred all other remedy to them.

The decision below disclaims a jurisdiction already exercised. Its first exercise was to preclude the claimants from proceeding before the Workmen's Compensation Bureau (R. 22-31). They were thereby compelled to proceed as claimants in the limitation proceeding. As such, they had to litigate issues of negligence and privity —wholly foreign to a Workmen's Compensation remedy— and to incur obligations for professional services (wholly unnecessary before the Workmen's Compensation Bureau) as well as to pay the stenographic charges of a three weeks' trial and a two years' reference on damages. After four years of litigation and costs and disbursements (exclusive of attorneys' fees) exceeding $10,000, these claimants are turned out of court.

The argument from inconvenience never presented itself more forcibly. The injustice of the result calls for scrutiny of the reasoning that produces it. The petitioners have been denied a remedy in the forum to which they resorted at the respondent's election. They are not replaced in their original situation nor can they be after such a lapse of time and such a burden of expense.

The claimants should not be left with their remedies in indefinite suspense.

Fitzgerald v. *Harbor Lighterage Co.*, 244 N. Y. 132, middle page 137.

The employer should not be heard to question the jurisdiction which it invoked and maintained until an adverse determination of the merits.

The whole theory of Workmen's Compensation is a swift and summary adjudication, without litigation or formality. That is forever lost to these claimants. They are now declared outside the jurisdiction originally asserted against them. But if they are to proceed before the Workmen's Compensation Bureau, the cheapness of that remedy has been nullified by the expense attached to the limitation proceeding and the swiftness of that remedy has been destroyed by the pendency of the restraining order. Every determination of fact reached by the Commissioner at such cost of time and expense in respect to these claimants is left open for redetermination by the Workmen's Compensation Bureau. It is a mockery to say this is restoring a remedy originally open to these claimants had the limitation proceeding and the restraining order (continued by the interlocutory decree) not intervened.

The Court below concluded that there had been no prejudice to the claimants because of the "offer" to pay compensation which the respondent made at the trial, which took place ten months after the limitation proceedings were instituted. No such offer was ever made even at this late date, as the record will clearly demonstrate. What the respondent did offer at the trial was to pay *all* of the claimants, which included both employees and non-employees, compensation under the New Jersey law (R. 289). To that offer was attached the proviso that if all the claimants did not accept it, none would be allowed to. Since the non-employees were clearly entitled to damages and were insisting on them, they declined the offer and by its terms the offer was not open to the petitioners who were employees (R. 289).

Moreover, the suggestion was not made until after petitioners had been put to the burden of seeking counsel and preparing for trial. They were already prejudiced not only by delay but by expenditure, and this was

pointed out to the court at the time of this alleged "offer" (R. 290).

Notwithstanding its alleged offer to pay its employees under the Compensation law, the employer insisted, even unto the Circuit Court of Appeals, on its right to limit its liability for such compensation to the value of the vessel. It assigned as error the failure of the Court below to limit its entire liability to the value of the "Linseed King" (R. 278, Assignment of Error No. 3).

The further suggestion of the Circuit Court of Appeals that the claimants had themselves repudiated compensation awards and demanded damages ignores the fact that only a minority had brought suit;* 12 of the 32 petitioners brought action for damages after the respondent had defaulted in its obligation to make immediate weekly payments of compensation. The other 20 did not bring any action for damages, nor had the employer paid to any of the petitioners the weekly compensation which it was required to pay under the Act. Instead of promptly paying compensation, the respondent, within three months after the disaster, filed its petition for limitation of liability and expressly asked that its liability to pay compensation be limited to the value of the "Linseed King." It obtained a stay which completely deprived the claimants of the summary benefits which the Compensation Act contemplated. The trial at which the so-called offer was made took place over a year after the disaster. During that year there was only one thing for the petitioners to do, namely,—hire counsel and incur the expense of preparing to prove that the disaster was due to the personal neglect of their employer.

The moment this limitation proceeding was commenced by the respondent, the petitioners recognized the fact

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*Of the 29 actions instituted against the respondent 14 or more were by non-employees and entitled to damages under the maritime law—(R. 10-11).

that the Compensation Act had been displaced and hence took the position that they were entitled to recover under the maritime law as supplemented by the New York Death Act.

The claimants have been unwavering in their insistance that the application of the Workmen's Compensation Act was excluded from the case by the Acts of Congress applicable thereto. Judge PATTERSON, however, took the view on the argument before him that the only permissible ground for a recovery was that the employer had breached its contract to pay compensation under the New Jersey law and that the limitation proceeding with its incidents constituted a repudiation, and he called for briefs upon the point. Without waiving their contention respecting the inherent force of the Limited Liability Acts, the claimants accordingly submitted a brief upon the point that even if the Workmen's Compensation Act were given full contractual effect its provisions fell for want of mutuality when the employer insisted that it had maritime rights which it never agreed to surrender, viz., the right to refuse to pay compensation in excess of the value of its vessel, unless its employees proved it guilty of personal negligence. The Workmen's Compensation Law, and therefore any contracts spelled out under it, contemplated prompt payment of compensation and involved a right to such compensation without proof of the employer's fault. Consistently with the employer's position that it had never contracted to give up its rights under the Limited Liability Acts, it must follow that the employees never gave up their right under said Acts of Congress to recover full damages upon proof of personal negligence. To hold that the employer was free to invoke the Limited Liability Acts but that the employees were not equally free to claim the benefit of those acts would involve a want of mutuality totally destructive of the contract relation.

The position of the employees in this respect has been recognized as sound. *Fitzgerald* v. *Harbor Lighterage Co.*, 244 N. Y. 132.

Conclusion.

The Limited Liability Acts certainly applied to such a case as this before Workmen's Compensation Laws were adopted by several of the States.

A State Legislature has no power to restrict the operation of the Acts of Congress or to confine the jurisdiction of the United States District Court thereunder nor have the Courts liberty to qualify the Acts of Congress in favor of State Statutes. The District Court had exclusive jurisdiction under the Limited Liability Acts not only to determine the merits but to afford to claimants a complete remedy according to the course of proceedings in admiralty. In aid of such remedy, in death cases, the death statute of the State having local jurisdiction should be applied. The Workmen's Compensation legislation of the States so conflicts with the Limited Liability Acts and the jurisdiction of the District Court that the attempted application of the Compensation statute has turned these petitioners out of that Court altogether.

The case involves no question of personal contract but presents a question of jurisdiction which is determined by the paramount force of the Acts of Congress. As the employer in this limitation proceeding asserted and litigated its Federal rights and remedies, the claimants did not forego their Federal rights and remedies but have been deprived thereof by error of the Courts below, an error singularly fraught with hardship and oppression.

This Court having exercised its power of review, it is respectfully submitted that the decision below so far as it dismisses these claimants as beyond the bounds of the jurisdiction of the District Court under the Limited Lia-

bility Acts, because of the effect given to the Workmen's Compensation Act of New Jersey, should be reversed, with costs, and complete relief afforded to these claimants under the mandate of this Court.

Respectfully submitted,

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